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STEPHEN T. PACHECO

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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

S.B.

Plaintiff,

v. **No.** D-101-CV-2013-02568

The State of New Mexico, New Mexico Department of Public Safety, Dr. John Doe, and Timothy Carlson

Defendants.

COMPLAINT TO RECOVER DAMAGES FOR DEPRIVATION OF CIVIL RIGHTS, VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, AND NEGLIGENT HIRING

COMES NOW, Plaintiff, by and through her attorney of record, Kennedy Law Firm, and brings this Complaint to recover damages arising from Defendants' unlawful conduct towards Plaintiff. In support of this Complaint, Plaintiff states as follows:

JURISDICTION AND VENUE

Plaintiff brings this Complaint under 42 U.S.C. Section 1983 for damages resulting from the Deprivation of Civil Rights inflicted upon her by Defendants, Title II of the Americans With Disabilities Act, and from The New Mexico Tort Claims Act. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331. Personal jurisdiction is proper since all parties reside or are employed in the District. Additionally, Defendants' actions giving rise to Plaintiffs' claims took place within the District. Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(b) as Defendants' actions causing injury to the Plaintiffs took place within the District.

EXHIBIT
A

PARTIES

1. Plaintiff S.B. is an individual and resides in Albuquerque, County of Bernalillo, New Mexico.

2. Defendant Carlson was a law enforcement officer and at all times material was an employee of the New Mexico State Police Department. Defendant Carlson was acting under color of state law at all relevant times at issue in this Complaint.

3. New Mexico Department of Public Safety is a public entity in the State of New Mexico.

4. The State of New Mexico is a State in the United States of America.

FACTUAL BACKGROUND

5. Defendant Carlson was an "SID" agent and SID agents are fully functional agents with full police authority statewide.

6. An SID agent must be a certified police officer for two years prior to becoming an SID agent.

7. Defendant Carlson charged with rape prior to employment as an SID information, and that allegation was available to the New Mexico State Police Department prior to his hiring as a law enforcement officer.

8. Defendant Carlson should never have passed his psychological evaluation to be admitted as a law enforcement officer for the State of New Mexico.

9. Defendant Carlson should have received psychological screening prior to his hiring as a New Mexico State Police officer.

10. If, Defendant Carlson did receive psychological screening prior to his hiring, Defendant Dr. John Doe failed to adequately evaluate Defendant Carlson.

11. Defendant Carlson was not qualified to be an officer, let alone an SID officer for the State of New Mexico.

12. During the Spring of 2011, Defendant Carlson had an incident with Albuquerque Police Department (APD) which caused the Police agencies to become aware than an officer employed by the State Police Department was engaging in activity with prostitutes.

13. During above incident, APD noted that Defendant Carlson had his duty weapon and badge displayed on his hip.

14. During 2011 through 2012, Plaintiff was a prostitute in Albuquerque, New Mexico.

15. Plaintiff was a prostitute to support her drug addiction, which in turn resulted from Post Traumatic Stress Disorder suffered as a 16 year old child.

16. In late 2011, Plaintiff was the passenger in a car when she notice a police vehicle following the car she was in.

17. While following Plaintiff's vehicle, the driver of the police vehicle engaged his emergency lights and initiated a traffic stop.

18. The driver of the police vehicle was Defendant Carlson.

19. Defendant Carlson exited his vehicle and Plaintiff saw that he had a badge and gun on his hip.

20. Defendant Carlson approached the passenger side of Plaintiff's vehicle where Plaintiff was rather than the driver's side.

21. Defendant Carlson ordered Plaintiff out of the car and told her to stand by his vehicle. Plaintiff complied.

22. Defendant Carlson then told the driver of the vehicle to "get the fuck out of here."

23. Defendant Carlson asked Plaintiff, after ordering the vehicle to leave, whether Plaintiff needed a ride.

24. Plaintiff asked Defendant Carlson if he would take her to a specific location, and Defendant Carlson said he would.

25. While giving Plaintiff a ride, Defendant Carlson started to take a detour from Plaintiff's requested location.

26. During the detour, Defendant Carlson told Plaintiff she was sexy and beautiful.

27. Defendant Carlson pulled into an alley and began to rub Plaintiff's genitals with his hand over Plaintiff's clothing.

28. Defendant Carlson asked Plaintiff to have sex with him.

29. Defendant Carlson's badge and weapon were displayed when Defendant made his request.

30. Plaintiff believed she would be arrested for prostitution if she did not comply with Defendant Carlson's request.

31. Plaintiff and Defendant got into the back seat of the police vehicle and had intercourse.

32. After Defendant Carlson had sex with Plaintiff, he dropped Plaintiff off at a residence with his telephone number.

33. Defendant Carlson picked up Plaintiff on at least three other occasions.

34. On two of these Defendant Carlson had intercourse with Plaintiff.

35. On the third occasion, Plaintiff said she could not have sex with Defendant Carlson.

36. Defendant Carlson told Plaintiff, "you don't have time for a blow job?"

37. Plaintiff said "no."

38. Defendant Carlson told Plaintiff he "would make it quick" and drove her to a secluded area.

39. Plaintiff then performed oral sex on Defendant Carlson.

40. Defendant Carlson had his badge and weapon displayed on each of their encounters.

41. Defendant Carlson would talk about his weapon while with Plaintiff.

42. No money was ever exchanged for these sexual encounters.

43. Plaintiff feared she would be arrested and taken to jail if she did do as Defendant Carlson requested.

44. On February 27, 2012, Plaintiff called APD and reported the above information.

45. APD contacted another individual who had a similar experience with Defendant Carlson.

46. APD initiated surveillance of Defendant Carlson On March 2, 2012.

47. Defendant was observed picking up Plaintiff.

48. Plaintiff asked Defendant if he would have taken her to jail if she had not been as cooperative to his requests.

49. Defendant Carlson told her he would have taken her to jail if she had not had sex with him.

50. APD contacted Defendant Carlson and Plaintiff after Defendant Carlson had parked.

51. Defendant Carlson admitted to APD officers that he had sexual intercourse with Plaintiff on three prior occasions in the backseat of his police vehicle.

52. Defendant Carlson's vehicle was taken into custody and a search warrant was performed.

53. The search revealed biological fluid residue throughout the police vehicle.

54. Each and every sexual encounter between Plaintiff and Defendant Carlson was coerced by Defendant Carlson.

55. Defendant Carlson used his authority as a State of New Mexico Police officer to force, or under the threat of arrest, Plaintiff to engage in sexual activities with him.

56. Defendant Carlson raped Plaintiff several times in his police vehicle.

COUNT I: FOURTH AMENDMENT VIOLATIONS

Plaintiff incorporates the preceding paragraphs by reference herein.

57. Defendant Carlson was acting under the color of state law when he wrongfully and without probable cause, seized Plaintiff in his vehicle.

58. Defendant Carlson was acting under the color of state law when he wrongfully and without probable cause, penetrated Plaintiff's body on each encounter.

59. Plaintiff has and had a Fourth Amendment right to be free from sexual extortion, sexual molestation, sexual harassment, and rape while in police custody pursuant to the Fourth Amendment of the United States Constitution.

60. Defendant Carlson was assigned the duty to guard and to transport Plaintiffs.

61. Defendant Carlson sexually molested and sexually harassed Plaintiff in a manner which was objectively unreasonable.

62. Defendant Carlson's acts violated Plaintiff's Fourth Amendment rights to be secure in her person from unreasonable seizures.

63. Defendant Carlson's deprivation of Plaintiff's rights caused Plaintiff damages.

64. Defendant Carlson acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive Plaintiff of her Constitutional Rights. As a result of the nature of Defendant's conduct, Plaintiff is entitled to recover punitive damages against the individual Defendant.

COUNT II – FOURTEENTH AMENDMENT VIOALTIONS

Plaintiff incorporates the preceding paragraphs by reference herein.

65. Defendant interfered with Plaintiff's liberty interests which entitles Plaintiff the right exclude persons from penetrating her body.

66. Defendant's conduct caused Plaintiff to be raped repeatedly under the color of law grossly depriving her of fundamental liberty interests.

67. The Defendant ignored substantive Due Process requirements when he used his authority to receive sexual favors he would not have otherwise received but for his position as State Police officer.

68. Defendant's actions intentionally and willfully deprived Plaintiff of her liberty interests without due process of law and without recourse for the arbitrary, abusive, harassing and criminal conduct of Defendant.

69. Defendant's actions proximately caused damages to Plaintiff as previously alleged.

70. Defendant acted willfully, knowingly and/or purposefully, and with deliberate indifference to deprive Plaintiff of her constitutional rights. Due to the nature of Defendant's conduct, Plaintiff is entitled to recover punitive damages against the individual Defendant.

COUNT III –VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT

Plaintiff incorporates the preceding paragraphs by reference herein.

71. The State of New Mexico and the New Mexico Department of Public Safety are public entities as defined by the Americans with Disabilities Act, 42 U.S.C. § 12131(1)(B) (1990).

72. The State of New Mexico and the New Mexico Department of Public Safety do not have sovereign immunity for claims arising under the Americans with Disabilities Act. 42 U.S.C. § 12202 (1990).

73. Plaintiff was a qualified individual with a disability, Post Traumatic Stress Disorder (PTSD), as defined by the Americans with Disabilities Act, 42 U.S.C. § 12131(2) (1990).

74. Plaintiff was suffering from a disability at the time she encountered Defendant Carlson.

75. Her disability substantially limited a major life function.

76. On the basis of her disability, Plaintiff was denied the benefits of services, programs, and activities of the State of new Mexico Police Department, including but not limited to the benefits of:

1. encounters with officers properly trained to deal with citizens who are disabled;

2. being treated with dignity by the government entity sworn to protect its community's citizens.

77. On the basis of her disability, the State of New Mexico Police and the New Mexico Department of Public Safety discriminated against Plaintiff by choosing not to provide adequate protection for citizens with disabilities such as Plaintiff's.

78. Defendants knew, or should have known, that police officers often encounter persons suffering from PTSD.

79. Defendants knew, or should have known, that prostitutes are likely to suffer from PTSD.

80. Defendants failed to make adequate accommodations for prostitutes with PTSD by failing to train, supervise or otherwise educate officers regarding their interaction and involvement with prostitutes.

81. Defendants knew, or should have known, that prostitutes with PTSD are susceptible to coercion by officers who might abuse their authority because of their disability.

82. Defendants lacked a policy or procedure to protect persons like Plaintiff, from officers, like Defendant Carlson, who use Plaintiff's disability to discriminate.

83. Defendants failed to provide adequate accommodation to ensure that Plaintiff had equal access to public benefits.

84. Title II of the Americans with Disabilities Act requires public entities, such as Defendants, to provide adequate accommodations to qualified individuals, such as Plaintiff, on the basis of their disability.

85. Defendant Carlson knew or should have known that Plaintiff was suffering from a disability.

86. Defendant Carlson used Plaintiff's disability to violate Plaintiff's bodily integrity.

87. Defendant Carlson therefore seized and had sex with Plaintiff as a result of Plaintiff's disability and discriminated against Plaintiff.

88. Defendant Carlson intentionally discriminated against Plaintiff.

89. Defendant Carlson was acting as an agent of Defendants, and used his authority from Defendants to execute the discrimination against Plaintiff.

90. Title II of the Americans with Disabilities Act forbids public service providers, such as Defendants, from discriminating against qualified individuals, such as Plaintiff, on the basis of their disability.

91. As a result of Defendants' conduct, Plaintiff suffered damages.

COUNT IV - TORT CLAIMS AGAINST DR. JOHN DOE AS A PRIVATE INVIDIVUAL – NEGLIGENT HIRING

Plaintiff restates each of the preceding allegations as if fully stated herein.

92. Defendant John Doe had a legal duty to protect the public's, and therefore Plaintiff's interest, through the general negligence standard, "which requires an individual to use reasonable care in dealing with society as a whole." *Narney v. Daniels*, 115 N.M. 41, 346 P.2d 347 (Ct. App. 1992) citing *Calkins*, 110 N.M. at 62, 792 P.2d at 39. Where an employer "might reasonably anticipate" that hiring someone would place certain members of the public at risk, that employer has liability for negligent hiring. *Narney v. Daniels*, 115 N.M. 41, 346 P.2d 347

(Ct. App. 1992), *Medina v. Graham's Cowboys, Inc.*, 113 N.M. 471, 473, 827 P.2d 859, 861 9Ct.App.1992).

93. Defendant John Doe owed a legal duty to appoint "only mentally stable police officers." *Narney v. Daniels*, 115 N.M. 41, 346 P.2d 347 (Ct. App. 1992). Defendant John Doe had a special duty of care to the public to protect them from psychologically unstable candidates being recommended to the force.

94. Defendant John Doe breached his duty of care to his client and third parties when John Doe approved Defendant Carlson for duty as a law enforcement officer.

95. As a result of Defendant John Doe's breach of duty, John Doe contributed to the State negligently hiring Defendant Carlson.

96. As a result of John Doe's breach of duty, John Doe negligently battered Plaintiff Cordova by providing Defendant Carlson with the power and authority in a his position as a law enforcement officer to falsely imprison, assault, batter, sexually assault, and otherwise deprive Plaintiff of her constitutional rights. "Common sense dictates that a mentally unstable person cloaked with the authority and paraphernalia of a law enforcement officer poses a danger to the people he encounters." *Narney v. Daniels*, 115 N.M. 41, 51, 346 P.2d 347, 357 (Ct. App. 1992).

COUNT V - TORT CLAIMS AGAINST CITY OF ALBUQUERQUE– NEGLIGENT HIRING, RETENTION, TRAINING AND SUPERVISION OF DEFENDANT CARLSON

Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

97. Defendants, either directly or through their law enforcement agents and employees, negligently caused assaults and batteries against Plaintiff. Defendant's negligence includes but is not limited to:

a. negligent pre-employment investigation and testing, negligent application of psychological examinations and polygraph testing to support negligent hiring and retention of Defendant Carlson;

b. negligent failure to train and educate law enforcement officers concerning the vulnerabilities of female prostitutes who are more likely to have been victims of sexually abuse, physical abuse, addiction, and/or child molestation;

c. negligently under staffing female law enforcement officers requiring male officers to have unsupervised contact with female detainees;

d. negligent supervision of male law enforcement officers with female detainees;

e. negligent training of law enforcement officers and negligent policies concerning the transportation of female detainees by male law enforcement officers;

f. negligent maintenance of law enforcement officer's patrol units;

g. negligent response or failure to investigate or respond to prior instances of dishonesty, misconduct, and crimes against female detainees by male law enforcement officers;

h. and/or inadequate investigations of criminal violations to Plaintiff and others similarly situated to her, such as the other confidential informant who came forward and the countless other women who were victimized by Defendant Carlson.

98. Defendants breach of duty to Plaintiff caused Plaintiff damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

I. Actual and compensatory damages sufficient to make Plaintiff whole.

II. Punitive damages against Defendant Carlson sufficient to punish him and to deter further wrongdoing;

III. Attorneys' fees, litigation expenses, costs, pre- and post-judgment interest as provided by law; and

IV. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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